

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

IN RE: ETHICON, INC.
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2:12-MD-2327

July 25, 2013
Charleston, West Virginia

TRANSCRIPT OF MDL BELLWETHER PRESENTATIONS
BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE
and
THE HONORABLE CHERYL A. EIFERT
UNITED STATES MAGISTRATE JUDGE

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1 Thursday, July 25, 2013, at 10:00 a.m. in open court

2 THE CLERK: The matter before the court is
3 In Re: Ethicon, Inc. Pelvic Repair Systems Products Liability
4 Litigation, Civil Action Number 2:12-MD-2327.

5 JUDGE GOODWIN: Good morning. We're here this
6 morning for the bellwether presentation in the In Re: Ethicon,
7 Inc. Pelvic Repair Systems, Inc. Products Liability
8 Litigation, MDL Number 2327. I'm joined by Judge Eifert.

9 Have the parties noted their appearance for the record?

10 THE REPORTER: Yes, they have.

11 JUDGE GOODWIN: All right. Thank you. Pursuant to
12 PTO 33, the parties submitted eight cases per side originally
13 for consideration as bellwether cases.

14 I understand that you've reached agreement on two cases;
15 Carolyn Lewis, a TVT Classic case on plaintiffs' list, and
16 Peggy Froemming, a Prolift case that's on Ethicon's list. Is
17 that correct?

18 MR. AYLSTOCK: Judge, that's incorrect.

19 JUDGE GOODWIN: All right.

20 MR. AYLSTOCK: We were talking about an agreement,
21 but we were unable to reach an agreement on --

22 JUDGE GOODWIN: Either of them?

23 MR. AYLSTOCK: Either of them, Your Honor.

24 JUDGE GOODWIN: All right.

25 MS. JONES: I think, Your Honor, that we've -- we

1 did have a discussion and we've had multiple discussions about
2 whether or not we could reach an agreement on some. In all
3 candor, I will tell you on behalf of the defendants --

4 JUDGE GOODWIN: I'm sorry. I couldn't --

5 MS. JONES: What I would say on behalf of the
6 defendants is that as we begin our presentation, I think you
7 will find that we are willing to accept those two and will not
8 specifically argue those, but we want to put that in the
9 context, if you would, of the other cases that are to be
10 selected and --

11 JUDGE GOODWIN: You're willing to accept them, but
12 they're not necessarily his favorites. Is that what it boils
13 down to?

14 MS. JONES: Well, no, I think the reality of it is
15 the -- we have accepted one that they selected and they've
16 accepted one that we selected, and we're willing to agree to
17 those, but we think that we need to agree to those in the
18 context of the other cases to be selected as representative of
19 the entire MDL population.

20 JUDGE GOODWIN: All right. I understand that
21 plaintiffs would like to know at the time I make the
22 bellwether selections which case will go first.

23 MR. AYLSTOCK: Which product, Your Honor. I believe
24 that Ms. Jones and I are in agreement that that would be a
25 good idea, and then we could stagger the reports for whatever

1 products come after the first product.

2 JUDGE GOODWIN: As you recall, I will ask that you
3 have one case ready and a second ready as backup in case the
4 first case falls through for whatever reason.

5 Is there any opposition from Ethicon to my identifying,
6 in the same order from which I probably this afternoon will
7 select the cases, the first two cases?

8 MS. JONES: No, Your Honor. What I would suggest is
9 that what we will ask for, so that Your Honor is aware, is
10 we're going to ask that Your Honor select two TVT cases, two
11 TVT-O cases, and one of the Prolift cases. And what we would
12 suggest, if Your Honor agrees that that's an appropriate
13 selection, is that when you select which ones of the cases
14 would be set, for example, in January, that it would be two
15 involving the same product, because I think that would be
16 easier for all sides that involve the same experts and the
17 same witnesses rather than having one involving one product
18 and one involving another.

19 JUDGE GOODWIN: I've got it.

20 MR. AYLSTOCK: And I'll get to this in my
21 presentation perhaps. We agree on the concept. We don't
22 agree which cases should go --

23 JUDGE GOODWIN: Oh, I understand. We wouldn't be
24 having this hearing.

25 MR. AYLSTOCK: I don't think so, Your Honor.

1 JUDGE GOODWIN: All right. I think I've got it. If
2 I mess it up, Kate will straighten me out.

3 I will identify the first case and the alternate in the
4 order selecting the five bellwethers. The way I'm
5 understanding you, that necessarily means that I'm going to
6 select two of the five that are the same product instead of --
7 well, at least two of the five. Does that make sense?

8 MS. JONES: Yes, Your Honor.

9 MR. AYLSTOCK: Yes, Your Honor.

10 JUDGE GOODWIN: All right. I'll select the five
11 cases and what I believe are the ones that are well-suited.
12 Each side has five minutes. Try to keep to this time limit,
13 and plaintiffs can go first. You have seven presentations.

14 Mr. Aylstock, are you going to do that or is somebody
15 else going to do it?

16 MR. AYLSTOCK: If I could, Your Honor, I had a brief
17 presentation to kind of give the Court some context on the
18 different products in the Ethicon MDL because it is -- it's
19 certainly many more products than --

20 JUDGE GOODWIN: That's fine, just so you take it off
21 of your five minutes for each of the seven.

22 MR. AYLSTOCK: Yes, Your Honor.

23 JUDGE GOODWIN: All right. Thank you.

24 MR. AYLSTOCK: May it please the Court. Bryan
25 Aylstock for the plaintiffs. I'm honored to be here this

1 morning.

2 I wanted to start, Your Honor, with explaining a little
3 bit about the different Ethicon products because there are
4 significantly more products in the Ethicon MDL than any of the
5 other MDLs. There are five, really six different SUI
6 products, the stress urinary incontinence products. There are
7 four pelvic organ prolapse cases.

8 What we have in this bellwether pool are TVT Classic
9 cases, TVT-O cases, TVT-S cases. It looks like we may have
10 one TVT-AA, which is an abdominal approach which is --

11 THE REPORTER: I'm sorry. Could you use the
12 microphone?

13 MR. AYLSTOCK: I'm sorry. Yes. And so we have a
14 wide range of the TVT products. We have four different
15 products for pelvic organ prolapse. The only one at issue --

16 JUDGE GOODWIN: I'm having a hard time understanding
17 you, too.

18 MR. AYLSTOCK: I'm sorry. Let me try again. Here
19 we go. Maybe that's better.

20 JUDGE GOODWIN: I think it will be.

21 MR. AYLSTOCK: We have four different pelvic organ
22 prolapse cases, and the only one at issue in this bellwether
23 pool are the Prolift cases. The Prolift+M is the exact same
24 product, just with a little bit different mesh.

25 When we talk about the SUI cases, there was an evolution

1 of the SUI cases over time. And in particular, the Gynecare
2 TVT Classic was the first Gynecare Ethicon product to the
3 market. It's -- oh, here it is. Okay.

4 It came on the market in 1998. It was a retropubic
5 device, which means it was implanted behind the pubic bone.
6 And that had the potential for causing some bladder
7 perforations. And because of that problem, AMS developed the
8 Monarc product, which was an entirely different method of
9 implantation for the sling.

10 Shortly thereafter, to regain some market share, TVT-O
11 came on the market. That's the transobturator approach. When
12 you think "obturator," think "out." The mesh comes out the
13 groin instead of up the abdomen for the woman.

14 And then, lastly, the single-incision market came to be
15 in the 2006 time frame with the TVT-S product.

16 We have, Your Honor, in our -- the plaintiffs pick one --
17 at least one of each of those major market segments. This is
18 important, Your Honor, because the defendants have -- I
19 believe that they will advocate that a TVT-S product should
20 not be chosen as part of one of the five bellwethers. We
21 strongly disagree with that assertion.

22 This is a Power Point slide from the Ethicon slide deck
23 on U. S. market share. The market definition for slings can
24 be divided into three different categories. You have your
25 retropubic, which is your TVT Classic, your transobturator,

1 which is your TVT-O, and your single-incision slings, which is
2 your TVT-Secur. They're very different products, and I'll get
3 to that in a minute, but they're different products with
4 different regulatory histories, different design controls.
5 Everything about them when it comes to the implantation method
6 is different, as well as some of the tools that go along with
7 it. And, again, this is Ethicon's own slide.

8 If we look at the market segment there, by 2010 the
9 obturator market was almost half of the sling market in this
10 country. The retropubic followed with about a third, and then
11 about 20 -- somewhere between 16 and 20 percent by mid 2010
12 were these single-incision slings like the TVT.

13 So we believe that one of -- as Judge Fallon said, we
14 want to look at the predominant variables when we're picking
15 bellwethers. A predominant variable in our judgment, Your
16 Honor, is the market definition of these slings, which fall
17 into the retropubic, transobturator, and single-incision.

18 JUDGE GOODWIN: How does it divide up with the
19 number of cases currently filed?

20 MR. AYLSTOCK: Well, that's an interesting point.
21 Let me get to that. I think Ms. Jones will have some data on
22 that, but there's a problem that's unique to the Ethicon
23 litigation when it comes to plaintiffs' attorneys filing cases
24 with the product I.D.

25 The TVT product as first to the market kind of became

1 known universally. When doctors talked about a sling, they
2 just talked about a TVT. They don't necessarily talk to the
3 patient about a TVT-AA or TVT-S or TVT-O. They just talked in
4 terms of, "I'm going to put a TVT in you." And, in fact, when
5 they're writing in the medical records what they're putting
6 in, they simply write "TVT." And that's -- we see this over
7 and over again in our inventory.

8 Now, it's compounded by the fact that the TVT label, the
9 TVT-O label doesn't say "TVT-O." And that's in the bottom
10 left-hand corner of the screen.

11 What the label says -- let me see if I can get this to
12 work -- over here is Gynecare TVT System. Now, we did not
13 know at the beginning of this litigation -- in fact, we've
14 only recently come to understand that this code 810081 is a
15 TVT-O product. This is not a TVT product.

16 So when you look at statistics as far as how many cases
17 are TVT Classic versus how many are TVT-O versus how many are
18 TVT-S that are filed, they're going to be off because
19 plaintiffs' attorneys and even patients have a hard time
20 deciphering what's in the records when it comes to what
21 product was implanted. And what you'll see, what you'll see
22 in the medical records --

23 JUDGE GOODWIN: Let me get off on a tangent. Let me
24 get on a tangent.

25 MR. AYLSTOCK: Sure.

1 JUDGE GOODWIN: Have you had your expert witnesses
2 look at each of these products already?

3 MR. AYLSTOCK: We're in the process of doing that,
4 Your Honor, and I'll get to that. Ms. Jones and I just had a
5 conversation about additional exemplars, to have them
6 evaluated, but they are very different products.

7 JUDGE GOODWIN: All right. Go ahead.

8 MR. AYLSTOCK: And because of how the doctors use
9 the term "TVT," like a Kleenex, like you and I would say, "I
10 need a Kleenex," it's very difficult for a plaintiff's
11 attorney to know at filing what product it is, even if all the
12 medical records are collected, even if the sticker -- whenever
13 a doctor opens up the package and gets the tools out and the
14 mesh, there's a sticker, and the doctor will literally place
15 the sticker in the medical record, and that will identify what
16 that product is.

17 Well, the stickers for the TVT-O product just say "TVT."
18 And so it's very confusing. And the only way we know this
19 is -- this another Johnson & Johnson Power Point -- the
20 ordering code for the TVT-O is the 810081. And so that's
21 why -- that's how we figured it out. And we figured it out
22 after a year and a half in this litigation.

23 So some of the cases we even filed we thought were
24 Classics but ended up being TVT-Os. I think the better way to
25 look at it is what is the market share. And what happened in

1 the market -- and this is undisputed -- is that once the
2 doctors realized there's a way that we can do this without
3 having such a high risk of bladder perforations, they went to
4 the transobturator method. And that's what the market
5 reflects, the sales of the various TVT products.

6 So what we did is we tried to get a cross-section of all
7 of the TVT, the major products, the S, which is the single-
8 incision, the O, the obturator going out through the groin,
9 through the pelvic bone, and the retropubic coming up through
10 the abdomen. And this slide is on the top of the plaintiffs'
11 picks and on the bottom of the defendant's picks.

12 What's striking here, Your Honor, is that all of the
13 defendant's picks, save one, are in the 2010 time frame. One
14 of them is the very, very end of 2009. Why is that
15 significant? Is that a coincidence? I don't think it's a
16 coincidence, Judge, because there was a major change in the
17 instructions to the doctors about how to implant these
18 products.

19 So what we tried to do is not only pick on the SUI cases
20 and S, we picked four Os and we picked a Classic. So we have
21 all three major products. And as you can see, it ranges from
22 2005 all the way to 2011. So we have a cross-section. I
23 think we did exactly what bellwether -- the bellwether process
24 is intended to do, look at a cross-section, whereas the
25 defense looked at this narrow of a time frame. And most of

1 these cases are Classic even though by 2010 the Classics had
2 decreased to one-third of the market share.

3 This is another significant point because when you look
4 at what the injuries are, on the defense side, except for one
5 case, which was an in-office mesh revision, which -- so the
6 Court understands, that's just simply a trimming of the
7 exposed mesh, usually a little estrogen cream on the inside of
8 the vaginal wall. And for some women, they're fine for a
9 time. Except for that one case, none of the others have had
10 any revisions at all. And why is that important in the
11 context of the 2010 dates when all of these were picked?

12 Well, it's important because there's a significant
13 latency period for a lot of women after implantation to get
14 the mesh to erode to the vaginal wall and to the urethra. Why
15 is that? Well, as women age, as estrogen levels decrease, as
16 maybe they get diabetes or lupus or some other disease that
17 affects the tissue quality, they're going to be much more
18 likely to erode in the future.

19 So what we tried to do is pick some cases where the
20 latency was shorter, some where the latency was six years,
21 five months. I think that's an important variable,
22 predominant variable, as Judge Fallon put it in his paper, for
23 how these cases should be evaluated. And if you only pick the
24 2010 cases, well, okay, a lot of those haven't been revised
25 yet. They may have some other problems. They may not have

1 insurance. They may have gone to their doctor and their
2 doctor said, "Well, there's risks to this. Can you live with
3 it?" And so they haven't been revised. But they're not
4 representative because they're so short in time, less than
5 three years for some of these from today to when the
6 implantation was. And so as we move forward, what we tried to
7 do is let's identify the problems common to all --

8 JUDGE GOODWIN: So are the 2010 cases filed
9 prematurely, that is, by people that don't have any trouble
10 yet?

11 MR. AYLSTOCK: Well, that's a very important point
12 because it doesn't take a revision surgery to have an injury
13 in this case. The injuries can be pain. It can be permanent,
14 debilitating, chronic pain without an erosion. And if I could
15 just skip forward a little bit, I'll tell you why that is.

16 The TVT-O product here, here's -- I'll show a picture of
17 it. These ice hook-looking things, these are going out, as
18 opposed to the TVT Classic, which goes up, where it goes up
19 through the abdomen. Why is that important?

20 Well, when they changed the design to try to decrease the
21 risk of bladder perforation, the thing that they missed was
22 that when you go through over here, these obturator foramen
23 is how -- is how the mesh is fixated. When you go through
24 that with these helical needles that go out like this, they're
25 very close to nerve branches, the obturator nerves and so

1 forth.

2 So the procedure itself, even without the mesh, can cause
3 permanent, lifelong debilitating pain. And then you get the
4 mesh in there and it can entrap. It can entrap nerves. So
5 that's a long way of saying just because you have a procedure
6 doesn't mean -- or haven't had a procedure doesn't mean you
7 haven't been injured.

8 And the flip side is also true. As we saw in the defense
9 picks, they picked one with a procedure that was an in-office
10 procedure. The procedures are wide-ranging. Some women can
11 have 23 procedures; some women can have a couple. But you
12 shouldn't get too hung up on the procedures because some,
13 frankly, are pretty minor and then the women go on and are
14 okay for a time. Others have transfusions. It's major blood
15 loss. It's under anesthesia. It's in the hospital. They try
16 to dig it out. They can't get it.

17 So just by looking at, well, this is the number of
18 procedures, that's not really in my view the best way to look
19 at whether a case is representative or not.

20 So the Classic is this U-shaped hammock that comes
21 through the abdomen. Here's another side picture of it. The
22 O -- think side to side or out -- goes through the obturator
23 foramen. And there's a membrane there where it actually pops
24 through. Those ice hooks pop through. And then the doctors
25 are told to pop and then stop and then drop and then pull it

1 through the groin area of the woman.

2 The S is completely different from either of those two.
3 It's a very small piece of mesh and it wedges up in there with
4 a single incision. There's no trocar passes that go outside
5 the body. So it's a very, very different procedure. It has
6 fixation tips where it wedges between the bone and the muscle.
7 And we believe based upon our analysis, that there will be
8 thousands of cases, if they're not already here, of this TVT-S
9 product. And it's a very important data point for what we
10 hope at some point we can sit down and talk about what the
11 resolution is. And it would be a shame for the women who have
12 this very different product not to have that important data
13 point. I think it would be important for the Court and the
14 parties to know what happens with that.

15 Now, I understand why they don't want to try one of those
16 cases. It's off the market. There was liability issues when
17 it was pulled off the market in Australia years earlier.
18 There's people talking back and forth about how unsafe it is,
19 and they even call it a failure. I understand that, and I
20 accept that these cases are better perhaps than some of the
21 other ones because of the liability issues, but we owe it to
22 those women. It's a market segment that was clear in TVT's
23 own -- or Ethicon's own documents that they occupied a big
24 segment of this market on this specific device.

25 So I'd urge the Court to put in this TVT, a TVT-S

1 bellwether. Of course, you know the difference between SUI
2 and POP products. The Prolift Total, completely different
3 than any of these. It's a lot more mesh. It's six trocar
4 passes blind through a woman's body, pelvis, the obturator, so
5 on and so forth. And here's a picture of that.

6 I did want to briefly address the expert deadlines if I
7 could, and in particular when it comes to the TVT products,
8 because as Judge Eifert knows, we've been working very hard at
9 trying to get those products discovered. A lot of discovery
10 was done before this MDL was even formed on the Prolift cases.
11 Some of us were involved in that. The experts in those cases
12 translate to this MDL. We expect to have a lot of the same
13 experts.

14 That's not necessarily the case in the TVT world.
15 There's five, six products in TVT. And so we're, frankly,
16 behind the eight ball on the TVT discovery. And Judge Eifert
17 issued an order yesterday. There's more briefing that needs
18 to be done. And right now our expert disclosures are due
19 August 22nd.

20 For AMS, which has a lot less products -- they only have
21 two. They have the transobturator. They have a -- one
22 transobturator and one retropubic device that are at issue,
23 the Monarc and a SPARC. Their expert deadlines were pushed by
24 Your Honor on PTO 69 to August 26th and then simultaneous
25 disclosures ordered. That's 99 days between disclosures and

1 trial.

2 We would ask -- in fact, we would beg, because in our
3 view, we're not going to be able to get experts ready. It's
4 impossible for us to get the TVT experts ready in time because
5 of all of the issues in the discovery. And I know this isn't
6 a discovery conference, but there are many that make it very
7 difficult for us to get a TVT case ready. So we would ask, if
8 the Court is so inclined, to give us the same 99 days in
9 Ethicon and have the disclosures due, instead of August 22nd,
10 October 7th.

11 JUDGE GOODWIN: And why is this, again? It's
12 because --

13 MR. AYLSTOCK: Well, it's a number of reasons.
14 First of all, there's many different products here that we're
15 all trying to discover simultaneously.

16 JUDGE GOODWIN: But you said you had ex -- on one of
17 them --

18 MR. AYLSTOCK: On Prolift we have the experts
19 because that discovery in New Jersey -- the New Jersey
20 discovery was directed. Judge Higbee said do Prolift
21 discovery, and that's what we did, and then she tried that
22 case. That particular case had 23 surgeries. You know, I --

23 JUDGE GOODWIN: You covered the field, so to speak,
24 on that.

25 MR. AYLSTOCK: Correct. And so we're ready to go.

1 We'd like -- I think if we did the Prolift, we could keep the
2 deadlines more in line and certainly keep the trial date, with
3 all the holidays and everything. And we request
4 September 20th, something, a few extra weeks for the Prolift
5 just to make sure we -- you know, it's *Daubert*, and we
6 certainly owe it to these women to do the best job that we
7 can. And since we're doing an AMS SUI case, I think it makes
8 sense to go ahead and look over to a POP case.

9 And Judge Fallon also in his paper when -- he said when
10 you look at bellwether cases, look at whether they're
11 trial-ready; are they trial-ready.

12 Well, Prolift, not quite there, but we're very close to
13 being trial-ready. The discovery that we're doing in the MDL
14 and flying all around the country and everything is almost
15 exclusively directed at the TVT cases, the five, six different
16 products. We're doing some cleanup here and there on the
17 Prolift cases, but that's what it is; it's cleanup. It's not
18 discovery as an original matter. And, frankly -- I'll give
19 you an example.

20 Just last week we had almost a million documents dropped
21 on us the day before -- or, I'm sorry -- it was right around
22 the time of the hearing before Judge Eifert. We had another
23 million or so documents -- or million or so pages, I should
24 say, dropped on us.

25 So we have to get that in our system. We have to look at

1 them. We have to get them to our experts. And we've had some
2 expert -- we've had some deposition scheduling issues.

3 JUDGE GOODWIN: If we did a POP case first, that
4 would solve your problem, right?

5 MR. AYLSTOCK: Yes, Your Honor, it would. And so
6 with that, if I may -- and he'll rush through it -- I'll
7 introduce Ben Anderson.

8 JUDGE GOODWIN: You've taken up most of his time.
9 You have about three minutes of the case left.

10 MR. AYLSTOCK: Mr. Anderson, Judge, speaks very
11 quickly.

12 MR. ANDERSON: Not too fast. Thank you, Your Honor.
13 We'll try to move through as quickly as I can.

14 What we tried to do is to choose a representative
15 sampling with a variety of women with a variety of backgrounds
16 and a variety of ages, a variety across all four products, as
17 well as some with no revision surgeries, some two, three
18 revision surgeries, and we tried to choose those over the time
19 line that Mr. Aylstock reflected.

20 We also tried to choose women that were representative of
21 the fact that we see a lot of women that have what we call
22 early onset injuries. They will have the mesh placed; and
23 within a few months, they begin to have erosions or they begin
24 to have chronic pain issues or painful sexual relations.
25 However, due to the nature of the way the body responds to

1 this mesh and the way -- because of the woman's tissue,
2 because of the way the mesh is placed, etcetera, some have
3 late onset.

4 So we have women that -- and this is borne out in the
5 literature, as well as well-known by Ethicon. And it's also
6 representative of the cases before Your Honor. Some are five,
7 six, and seven years where the women think they're doing just
8 fine, and all of a sudden they begin to have chronic pain,
9 they begin to have multiple recurrent erosions and recurrent
10 infections.

11 So we tried to choose a representative sampling across
12 the board. The first two cases I want to discuss with Your
13 Honor are both Prolift cases. Prolift is for prolapse, and
14 that is Ethicon's product that came on the market in 2005.
15 And the first one is Ms. Lillie Crews. And Ms. Crews is --
16 pardon me, Your Honor.

17 Ms. Crews was 57 at the time of her implant. She is now
18 61. She is married with two children, and her implant was in
19 2009. It was two and a half years before she began to have
20 problems. So this is more of a later onset type injury. She
21 began experiencing bleeding, heavy cramping, chronic pain,
22 which we see in 80 to 90 percent of the cases. The biggest
23 problem with these women is chronic pelvic, debilitating,
24 untreatable pain. That is the biggest single most important
25 factor before this Court and across the board. And all of

1 these women have it that we are presenting to Your Honor.

2 She has had dyspareunia, so painful sexual relations, and
3 recurrent kidney infections. She had one revision two and a
4 half years after her implantation and then had to have another
5 one six months later due to the exposure of the mesh and the
6 erosion. And, Your Honor, I'm sure after beginning the *Bard*
7 trial and hearing other -- erosions are no simple matter.
8 That is ulcerations of the vaginal tissue or other pelvic
9 floor tissue with the mesh being exposed either because of the
10 inflammatory response or due to an infection or due to
11 mechanical irritation.

12 So it's no small matter when we hear that a woman has
13 recurrent erosions. Someone is having to go in there and
14 either cut that mesh and put estrogen cream on it or to try to
15 go in and, under general anesthesia, try to remove all of it,
16 which as Your Honor knows very well is impossible in most
17 cases.

18 So her injuries are representative because, A, she
19 doesn't have a lot of co-morbidities and other health
20 complications other than those for which the mesh was
21 implanted. She's had two procedures, and she also has the
22 potential for future complications.

23 So we would move on to the second Prolift case. And this
24 will be presented to Your Honor so that you have these things.
25 I'm just going to try to highlight a few things out of these

1 eight that I'm trying to present.

2 Ms. Pollard is also a Prolift -- had Prolift implanted in
3 her. She was 43 at the time. She's married and has five
4 children. This would be, as opposed to Ms. Crews, this is
5 early onset. So within four months, she had erosions into her
6 rectum, and it was repaired four months after the implant.
7 However, like many of the women, she continues to have chronic
8 debilitating pelvic pain as well as recurrent erosions. And
9 she was implanted by an Ethicon-trained gynecologist. And as
10 you'll review some of these things, we believe that that's
11 important in some of our selections. And, of course, this was
12 prior -- her case was prior to any substantive IFU changes.
13 So we'd ask the Court to keep that in mind when trying to
14 decide as between one of these two Prolifts.

15 Now let's talk about some of the TVT-O cases if we could
16 quickly. Ms. Staci Moreland. She was 34 when this was
17 implanted in her body. She had the TVT-O, which as
18 Mr. Aylstock explained, is Ethicon's sling placed
19 transobturator, so through the groin. And she had early
20 onset. So unlike some of the other TVT-O products that we'll
21 talk about briefly, she had early onset problems. What were
22 those? Early erosions.

23 She had to have two revision surgeries, and one was
24 approximately a month afterwards, after she had this
25 implanted, and then another one the week later. And they

1 tried to remove some of the mesh. Unfortunately, it remains
2 stuck in her thigh to this day. She is married with three
3 kids and she is unable to have sexual relations with her
4 husband; unable to have sexual relations with her husband,
5 chronic pelvic pain, a burning sensation chronically, and
6 recurrent UTIs.

7 Recurrent UTIs, Your Honor, just to digress for one
8 moment, it's very, very important because these women who have
9 to keep coming back and being placed on antibiotics, a lot of
10 their doctors, they run out of options because they become
11 resistant. And so they have to continue to go from -- after
12 they're on one for a year, then they go on another antibiotic
13 for a year. And so it's a constant revolving problem, coupled
14 with all the other problems that they already have. So it's
15 important to keep that in mind we feel. And even after she
16 was treated, her problems continue to worsen to this day.

17 JUDGE GOODWIN: Did you say two revisions or three?

18 MR. ANDERSON: Two, Your Honor. One was three --

19 JUDGE GOODWIN: I think she said she had three,
20 didn't she?

21 MR. ANDERSON: She had one -- oh, I'm so sorry. She
22 did have one that was a week later. They had to go back in
23 and do another repair. I apologize, Your Honor.

24 JUDGE GOODWIN: That's all right.

25 MR. ANDERSON: Both of those were in March of 2009.

1 JUDGE GOODWIN: Okay.

2 MR. ANDERSON: Thank you. And then we have Tonya
3 Edwards. Tonya also was placed with a TVT-O when she was 33
4 years old. She is a late onset, so --

5 JUDGE GOODWIN: Now, what's her product?

6 MR. ANDERSON: TVT-O, Your Honor.

7 JUDGE GOODWIN: All right.

8 MR. ANDERSON: So hers was a late onset. Six and a
9 half years after it was placed, she began to have horrible
10 erosions, chronic pelvic pain, cramping, throbbing throughout
11 her pelvis, dyspareunia or painful sexual relations with her
12 husband. And when they went in to do the revision, they found
13 what many doctors find when they're trying to treat sling- and
14 mesh-related complications. They found the sling was bunched
15 and completely encapsulated with inflammatory scar tissue.

16 We believe that she's representative because she did not
17 have, like the other women, any significant other health
18 conditions. So the jury can be very clear on what condition
19 we're here to hear about, why it was necessary in this
20 doctor's mind to use the sling, and whether those
21 complications are related to the sling and not some array of
22 other problems that she may have.

23 She also has had worsening stress urinary incontinence.
24 So the very thing that the sling was implanted for has gotten
25 much worse for her. But that's just -- that's the least of

1 her problems compared to the pain, the vaginal bleeding, the
2 cramps, and difficulty with all of her bowel movements. And
3 when she tries to have sex, it's exceedingly painful, which
4 has, like for most of these women that have dyspareunia,
5 caused great strain on her marriage.

6 We will then talk about Ms. Jo Huskey, also, Your Honor,
7 a TVT-O product implanted when she was 51. She is also
8 married. And she is representative because, A, she doesn't
9 have a lot of co-morbidities as we've discussed before, but,
10 B, a lot of these women do, as Mr. Aylstock --

11 JUDGE GOODWIN: A lot of these people you're talking
12 about are very young. How is that representative of the total
13 inventory of cases?

14 MR. ANDERSON: Did you say they aren't or are --

15 JUDGE GOODWIN: They are.

16 MR. ANDERSON: Yes, Your Honor. Well, obviously
17 there's an array and there's a mean average I think with
18 slings somewhere in the late 40s to early 50s to late 50s,
19 early 60s, so --

20 JUDGE GOODWIN: Somewhere between the late 40s and
21 early 60s.

22 MR. ANDERSON: Well, it depends on which study you
23 read. Just like anything else, it depends on which of their
24 internal documents you read.

25 JUDGE GOODWIN: I'll take that as an answer I don't

1 understand.

2 MR. ANDERSON: Let's say we tried to make it
3 representative within this, you know, 40s to 60s.

4 JUDGE GOODWIN: All right.

5 MR. ANDERSON: So, yes, Ms. Huskey had a TVT sling,
6 the O. And like a lot of the women, she tried to have
7 conservative treatment at first, which did not work, and so
8 with the conservative treatment first for the mesh erosions,
9 and then she comes back. And so they tried a partial
10 excision, you know, four months after the procedure. It did
11 not work. So she came back six months later, and she has
12 to -- they couldn't remove the mesh. It's still stuck in her
13 thigh.

14 One of the problems that we see both with the Prolift
15 arms, which are very similar to the TVT Obturator, is that
16 mesh gets deeply embedded into the thigh and into the groin
17 area, and the doctors cannot -- they don't want to run the
18 risk of trying to dig and dig and create even more problems
19 with the nerves and the tissue and the muscle. And even their
20 attempts have not -- have also left her with continued
21 physical therapy and chronic neuropathies of her pelvis.

22 Why is she representative? She has suffered two
23 complications and she tried the conservative treatment and it
24 did not work, nor did the second.

25 I'll move on to our TVT-O case Schneeberger-Ingram. And

1 she is married. She is 44 years old. And she had two
2 revisions. She would be an early onset TVT-O. Five months
3 after, she had to undergo her first revision treatment,
4 followed by as much of the sling as they could remove the
5 following year. So she has early onset, but then a year later
6 they have to continue to go back to try to revise her
7 problems. She has horrible permanent nerve entrapment, and
8 the sling is scarred in. And she also cannot have sexual
9 relations, or when she does, it's almost impossible, with her
10 husband.

11 So she is representative again of someone without
12 significant co-morbidities, married with children, problems
13 with sexual relations, chronic pelvic pain, erosions, and the
14 need for having those revised.

15 We'll then move on to our TVT product. This is Carolyn
16 Lewis. This was originally picked by --

17 JUDGE GOODWIN: TVT --

18 MR. ANDERSON: Classic, Your Honor, the retropubic,
19 so the very first device, sometimes called retropubic,
20 sometimes called Classic.

21 MR. AYLSTOCK: Judge, if it might be helpful, I do
22 have some notebooks I can pass out.

23 JUDGE GOODWIN: What are those, copies of the
24 slides?

25 MR. AYLSTOCK: Of the slides.

1 JUDGE GOODWIN: Okay. I'll take them. They'll be
2 handy.

3 MR. ANDERSON: Tab 3 is the plaintiffs' bellwether
4 selections, and we are at about 12 pages back, Ms. Lewis. So
5 a TVT product, originally a defense pick which did not end up
6 being one of their picks and ended up being one of our picks.

7 So Ms. Carolyn Lewis, 59 years old. She's married. She
8 was implanted in November of 2009. She has not had a revision
9 surgery. She has had chronic pelvic pain and horrible painful
10 sexual relations such that she and her husband have not had
11 sex in over two years. She lives with and has chosen to live
12 with this chronic pelvic pain. And, of course, she is
13 representative of those women out there who have chosen not to
14 have a revision, yet have to -- will suffer for the rest of
15 their lives with this permanent implant.

16 We'll move on quickly to the TVT-S product that we chose.
17 That is Ms. Edra Vazquez. She was 35 when the TVT-S was
18 implanted. She is now 40. She is a late onset TVT-S
19 bellwether pick. Four and a half years after her implant, she
20 had a partial removal because the mesh had eroded and
21 perforated into her urethra. It was a very difficult revision
22 surgery. Dr. Greibling was in there for over four hours
23 trying to remove this carefully away from the urethra. And so
24 she has had worsened incontinence, urinary problems with both
25 urinary retention issues and urinary urgency problems, chronic

1 pelvic pain, and painful sex during intercourse.

2 So those are the representative plaintiffs. I tried to
3 keep it short. If you have any questions, I'll be happy to
4 answer them. Thank you so much.

5 JUDGE GOODWIN: Thank you. All right. I'll hear
6 from the defendant.

7 MS. JONES: May I proceed, Your Honor? If I could
8 have just a second, Your Honor, to switch computers. I
9 apologize.

10 JUDGE GOODWIN: That's all right.

11 MR. AYLSTOCK: I apologize too, Your Honor.

12 MS. JONES: I think it was Bryan's fault.

13 JUDGE GOODWIN: Lawyers aren't good at technology,
14 or not very many of them are, okay?

15 MR. AYLSTOCK: I certainly don't fall in that
16 category.

17 JUDGE GOODWIN: Can you clear the screen?

18 THE CLERK: No.

19 MR. AYLSTOCK: There you go.

20 THE CLERK: Thanks.

21 MR. AYLSTOCK: Just keep hitting enough buttons.

22 MS. JONES: All right. I thought it would be up
23 there now.

24 JUDGE GOODWIN: Turn those monitors on over there in
25 the jury box. It could make the argument better downstairs.

1 MS. JONES: I don't know, Your Honor. We had it
2 operating earlier today.

3 JUDGE GOODWIN: Take your time, Ms. Jones.

4 THE CLERK: Is it showing presentation cart on your
5 screen, because it does not on mine. Does it show that the
6 presentation cart has control at this point, because it's not
7 showing that on mine, on the screen that Bryan is looking at.

8 MR. AYLSTOCK: Just trying to get laptop input.

9 THE CLERK: Right. Presentation cart.

10 (Remarks off the record)

11 MS. JONES: Your Honor --

12 JUDGE GOODWIN: Yes?

13 MS. JONES: -- I apologize for the best-laid plans.
14 We've got hard copies here if Your Honor --

15 JUDGE GOODWIN: No, that's fine.

16 MS. JONES: If you want us to go through that, I'm
17 happy to do that.

18 JUDGE GOODWIN: It's fine. Are the people on their
19 way up?

20 THE CLERK: Yes, they are.

21 JUDGE GOODWIN: Let's just take about five minutes
22 and wait for the tech people to come up from downstairs.

23 MR. AYLSTOCK: We're going to try it on mine as
24 well, Your Honor. Maybe it will work.

25 JUDGE GOODWIN: All right.

1 MS. JONES: It was working 30 minutes ago. I think
2 I clearly jinxed it.

3 JUDGE GOODWIN: I'm certain. I'm certain. Let's
4 just be at ease until the tech people come along.

5 (Recess from 10:50 a.m. to 10:55 a.m.)

6 JUDGE GOODWIN: All right. Ms. Jones?

7 MS. JONES: May it please the Court. I'll try my
8 best to not have any more technical interruptions here.

9 Your Honor, with the Court's permission, I'm going to
10 give an overview similar but very different from Mr. Aylstock
11 in terms of how we came to our selections and the features
12 that we think are important. Mr. Thomas was then going to
13 respond to the plaintiffs' selection of claims, and then I'll
14 present our nominees.

15 I'll just start with the purpose of the bellwether
16 selection process, which I know Your Honor is more than well
17 aware of, but it occurred to us that what Judge Fallon says
18 here is very important; that is, in determining what the
19 bellwether selections are, it's very important to know what
20 types of cases actually comprise the MDL so that, in fact,
21 cases can be selected that will result in the ultimate
22 disposition of the MDL or the cases in the MDL.

23 And so to do that, we went about considering how to
24 define a representative claim, looking at the different
25 products, whether it was incontinence or prolapse, the age of

1 the plaintiffs, reasons for the implant and so forth.

2 As Mr. Aylstock has already mentioned, there are five TVT
3 products at issue in this multi-district litigation. The
4 three that are of most interest are the TVT, the TVT
5 Obturator, the TVT Secur. There are four prolapse products at
6 issue. But as Mr. Aylstock mentioned, really only the Prolift
7 is at issue. This is what I think is important, is when you
8 look at this chart, we currently as of earlier this week had
9 10,520 claims in the Ethicon MDL.

10 Now, Your Honor, some of those are those with which we
11 have been served but that have not yet been filed based upon
12 the tolling agreement that we entered into.

13 JUDGE GOODWIN: Yeah.

14 MS. JONES: Of those, some 5,200 have filed patient
15 profile forms and --

16 THE REPORTER: I'm sorry? "Have filed -- have
17 filed" --

18 MS. JONES: Have filed patient profile forms. And
19 so the information that I'm going to present to you is the
20 information gleaned from those patient profile forms, because
21 that, frankly, gives us, the defendants, the best information
22 that we have about what makes up the claims in the MDL in
23 general.

24 And what we did was we looked at those claims, those
25 5,200, believing that they would be the most representative

1 for a number of different reasons, not the least of which is
2 that in that roughly four to five thousand claims that are not
3 included here that have been filed in the last couple of
4 months, there are a number of those in which there's
5 absolutely no product identification. In some cases, all of
6 the manufacturers have been sued. So there's no way for us to
7 determine more precise information about that.

8 What we suspect, though, is that the figures that I'm
9 going to present to Your Honor are the most indicative that we
10 have, the most predictive that we have and, at best, will in
11 certain instances change in a way that I think will
12 demonstrate that perhaps there are claims here that may or may
13 not be as important to the case.

14 Once we look at this chart, you see the 2,778 claims
15 involving a single product only are stress urinary
16 incontinence claims. Those are the TVT claims. Seven hundred
17 and forty-two of those are prolapse products.

18 If we look then at the breakout, what you have is that
19 21 percent of the entire MDL are Prolift claims or prolapse
20 claims, and the other 79 percent are SUI claims, which clearly
21 indicates to us that four out of five of the plaintiffs are
22 SUI claims or TVT-related claims rather than the Prolift
23 claims, which, frankly, Your Honor, I know Your Honor is
24 aware -- and we'll come back to it -- that we argued early on,
25 I think at the first time we appeared before Your Honor, that

1 an SUI case ought to be the first tried --

2 JUDGE GOODWIN: Right.

3 MS. JONES: -- for this very reason, and Your Honor
4 is well aware that initially in our nominations, we didn't
5 include any prolapse cases for that reason.

6 JUDGE GOODWIN: And I understand that. I also note
7 that your charts don't include multi-product --

8 MS. JONES: That's correct.

9 JUDGE GOODWIN: -- cases. And that would change the
10 percentages considerably.

11 MS. JONES: That would change the percentages on
12 some of these but certainly not on all of them, but we focused
13 only on that.

14 JUDGE GOODWIN: And I asked Mr. Aylstock about doing
15 a pelvic organ prolapse case first because of his discovery
16 requests, but let me ask you about the progress of discovery
17 in that light. I understand from Judge Eifert that in the SUI
18 product cases, we've been on a regular basis taking, like,
19 nine-day depositions of a witness because we're covering each
20 of the products. And I can understand why it takes a long
21 time, but if every deposition is taking nine days, I don't --
22 I wondered the same thing I wondered when Ms. Cohen filled up
23 one side of my courtroom with notebooks.

24 How in the world are we going to try those cases in 12
25 days, which we are. I didn't wonder if we were; I only

1 wondered how we were.

2 So in the context of your presentation -- and I know you
3 will -- explain to me the practicalities that you see of the
4 schedule that I have in place and how that relates to the
5 problems the parties are having in terms of getting discovery
6 done on the SUI products.

7 MS. JONES: If I can just digress a little bit --

8 JUDGE GOODWIN: Sure.

9 MS. JONES: -- then to address that issue, Your
10 Honor. All of the discovery, 90 percent of the discovery in
11 this case to date is related to the TVT products.

12 JUDGE GOODWIN: Right.

13 MS. JONES: There are five TVT products. As you'll
14 see, the TVT Abbrevio and Exacto involve a very small
15 percentage. Virtually no discovery has been devoted towards
16 those. So we're really discovering three products, although
17 we have frankly said we want to discover -- we'd rather the
18 plaintiffs take those depositions in the hopes that we'll
19 never have to present these discovery again.

20 The depositions that have taken four, five, and six days
21 have been the depositions that have been 30(b)(6) designees.
22 The depositions that have been -- the others of the key
23 witnesses have been, frankly, longer than we thought they
24 should have been or needed to be, but I don't see that as --
25 I'm not going to address that as an issue here.

1 What I will say is that on each one of those depositions,
2 we have allocated at least two days for those depositions with
3 the hopes that we could simultaneously conclude any New Jersey
4 primarily depositions as well, and we've tried to work with
5 that, and there have been a number of scheduling issues that
6 have taken place.

7 I will say that there are additional depositions or
8 depositions that have not been completed that are now being
9 re-scheduled, in some cases at the plaintiffs' request and
10 some cases simply because they weren't completed, in late
11 August, early September, as late as that.

12 I will also tell Your Honor that the vast majority, if
13 not all of the key depositions have been taken in terms of the
14 key people that were involved in the issues. And I will say
15 that there have been a total of -- I believe it's 71
16 depositions that have been requested in addition to the
17 30(b)(6) depositions. The number of those that have been
18 scheduled and/or completed is in excess of 45. The plaintiffs
19 have withdrawn the request of certain of the depositions.

20 So I don't think that discovery -- let me put it this
21 way. If Your Honor says we're going to try a TVT case in
22 January, we'll try a TVT case in January, and discovery can be
23 completed. The depositions that currently are being
24 re-scheduled are being re-scheduled at the plaintiffs'
25 request, and we're accommodating them, and I'm not pointing

1 fingers at them, but there is some delay.

2 We have agreed with them -- and the way the two-week
3 extension came about was that we were trying to work in
4 harmony with New Jersey on a matter that had to be
5 re-scheduled until later, and we said we'll agree to a
6 two-week extension of all of the deadlines down the line and
7 that you can, in fact, supplement any expert reports to the
8 extent that you need to. We won't object to it because of
9 these depositions.

10 So practicality, it's going to be very difficult, but we
11 will get it done. The other reason -- and let me just say
12 that it's important to us, as Your Honor is already aware, we
13 clearly have tried a Prolift case. We have at least two
14 others likely to be tried this fall, state court cases. So
15 from the standpoint --

16 JUDGE GOODWIN: Where? Where?

17 MS. JONES: One in the State of Texas and one in the
18 State of Missouri.

19 JUDGE GOODWIN: The New Jersey case has been moved.

20 MS. JONES: I beg your pardon?

21 JUDGE GOODWIN: The New Jersey case that was
22 scheduled --

23 MS. JONES: The New Jersey case -- the next New
24 Jersey case is scheduled in March. There is a Bard case
25 scheduled in September in New Jersey, as I understand it.

1 JUDGE GOODWIN: Okay.

2 MS. JONES: So I know you're going to be onto my
3 time in a minute, but that's a little bit of the story of
4 the --

5 JUDGE GOODWIN: I'm not taking this off your time.
6 I'm trying --

7 MS. JONES: I understand.

8 JUDGE GOODWIN: -- to understand. I don't mind --
9 and I want to help to adjust schedules that help the parties.
10 What I don't want to do is move trials. And sometimes by
11 adjusting the schedule in the middle, you put it so that I
12 don't have any time to decide. So that's what I'm concerned
13 about.

14 MS. JONES: Well, my concern is not, Your Honor --
15 we'll work with an adjustment of the expert designations.

16 Now, the agreed-upon case management order that we have
17 provides for a staggered identification of expert witnesses,
18 and I would like to maintain that. I understand Your Honor
19 can say no, but I would like to maintain that even if it's a
20 shorter period there because the plaintiffs' designation of
21 experts may or may not affect whether or not we need all of
22 the different categories of experts that we would otherwise
23 name. But I don't have any objection to an extension of the
24 expert deadline if that's the issue.

25 One of the problems that we, frankly, looked at, Your

1 Honor -- and I'm not prepared without pulling out the order --
2 is that the *Daubert* deadline is, I think, scheduled before the
3 dispositive motion deadline. And the concern was that as we
4 moved back the expert witness deadline, that we were going to
5 have to adjust the *Daubert* motion deadline accordingly. And
6 there was some question as to whether or not Your Honor would
7 be agreeable to that.

8 JUDGE GOODWIN: Well, I think I do need to adjust to
9 the extent that the *Daubert* motions are complete and have been
10 ruled on before you filed dispositive motions. I'll have to
11 do something to do that.

12 MS. JONES: So clearly we don't have any objection
13 to adjusting those schedules in that manner. We do strongly
14 believe that we should not try a Prolift case in January.

15 JUDGE GOODWIN: All right. I'll let you go back to
16 what you wanted to tell me.

17 MS. JONES: Well, one of the reasons that we believe
18 that we should not try a case in January is because we've got
19 79 percent of those cases in the MDL are TVT cases. And if we
20 look at how they're broken out, 56 percent of those are TVT,
21 28 percent are TVT-O cases, and 12 percent are TVT-S cases.

22 Now, I want to call Your Honor's attention to the fact
23 that Mr. Aylstock suggested that the medical records and so
24 forth just refer to TVT and that this would be an aberration,
25 but the patient profile forms require the lot number to be

1 listed on the patient profile forms of the product. And these
2 figures represent the identification of the product based upon
3 the lot numbers that are in the patient profile forms.

4 So out of that 5,200 cases that we currently have before
5 Your Honor, 56 percent of them are the original TVT Classic or
6 retropubic, and 28 percent of them are TVT-O, and 12 percent
7 of them are the TVT-S cases.

8 If we look at the time of implantation in terms of the
9 dates, what you will see is that the vast majority -- well, I
10 don't want to say the vast majority. More claims were filed
11 involving implantation in the year of 2009 and 2010 with
12 respect to the TVT cases than any other year. That's just
13 what the patient profile forms show. If we look --

14 (Ms. Jones and Mr. Thomas conferred privately off the
15 record.)

16 MS. JONES: Oh, I'm sorry. I see. We've got a typo
17 there.

18 JUDGE GOODWIN: I see it there.

19 MS. JONES: The white -- the white involves the
20 prolapse products and the red involves the TVT products. I
21 don't know how many times we can look at this and not find
22 those, but it's just the reverse of what it says.

23 So that's the reason that when Mr. Anderson refers to the
24 dates more claims were filed, they were implanted during those
25 dates than any place else.

1 In terms of the injuries -- and we've got all these
2 plaintiffs' self-reported injuries because the injuries that
3 are identified for pain, urinary problems, dyspareunia, and
4 infection, infection is what I would represent to Your Honor
5 is that the science and the medical literature simply doesn't
6 bear out the fact that you would anticipate that number of
7 infections. Infections associated with these products are
8 extraordinarily low. So we don't know that that is, in fact,
9 representative, but it does show up on the patient profile
10 forms.

11 I know Your Honor has had questions in the past about the
12 revisions. The plaintiffs talk about revisions. This is what
13 the plaintiff profile forms show. If you look at the SUI
14 products, 61 percent of those claims had no revisions,
15 29 percent had one revision. So we have 90 percent of the
16 claims with one or no revision.

17 Those numbers vary a little bit whether it's a TVT, a
18 TVT-O, or a TVT-S, but it's between 59 and, like, 64 percent
19 it averages out.

20 If you look at the prolapse products, 42 percent have had
21 no revisions, 37 percent have had one revision. So we end up
22 with 79 percent with one or no revisions.

23 And so if you look at what we've tried to do with looking
24 at the broad category of claims here, we named four TVTs,
25 which represent more than half of the products, three TVT-Os.

1 Because of our understanding about Your Honor's desire
2 concerning the -- at the AMS hearing about having a prolapse
3 product involved, we named one Prolift. We accepted the
4 plaintiffs' designation of Ms. Froemming. And, frankly, if
5 Your Honor is inclined to name a Prolift product, we would
6 hope that that would be it and that perhaps Your Honor would
7 consider; if not, that we have the same procedure that AMS has
8 in place and go back and look at two or three Prolift cases
9 when we actually have the opportunity to look at that.

10 So we believe that the representative claims -- that our
11 group of plaintiffs appropriately represent the makeup of the
12 MDL. I point out that each -- at the beginning of the
13 selection process, each party selected 15. We lost during the
14 course of discovery, through dismissals or requests for
15 withdrawal, five of those claims, so that -- so that our
16 selections were, in fact, reduced. And therefore, you know,
17 here we are with what we have.

18 Mr. Thomas is going to address the plaintiffs'
19 selections, but what at the end of the day we're going to
20 suggest to Your Honor and that, you know, make us not perhaps
21 perfectly happy, but happier than some other alternatives,
22 would be we would accept the Lewis, which is the plaintiffs'
23 only TVT case that they named, which are over half of those
24 products.

25 Ms. Lewis is going to have a revision in September, so

1 she will have a revision, and we would suggest to Your Honor
2 that you select another TVT case but one of the TVT cases of
3 ours that has no revision, that you select two TVT-O cases,
4 one with a revision and one without a revision, and then
5 ideally it would be the -- if you're inclined to do a prolapse
6 product, to do the Froemming case. And with that, I'll yield
7 to Mr. Thomas if it's okay.

8 JUDGE GOODWIN: Okay. Mr. Thomas.

9 MR. THOMAS: Thank you, Your Honor. Your Honor,
10 obviously the question now is whether the plaintiffs' nominees
11 accurately reflect the pool of cases from which you'll be
12 selecting cases.

13 I want to ground you again in some of the boards or
14 slides that you saw before about the distribution of these
15 cases. The largest group is TVT Classic, then TVT-O. That
16 makes up 84 percent of the cases. Seventy-nine percent of the
17 cases are SUI cases. Twenty-one percent are the prolapse.
18 That's the product mix that we're working with: Eighty-four
19 percent TVT, TVT Classic and O, and then the four-to-one ratio
20 of SUI-prolapse. And perhaps most importantly, compared to
21 what the plaintiffs have shown you, is the breakdown of
22 revisions.

23 Single-product SUI cases, 61 percent have no revisions,
24 29 percent have one revision. That makes 90 percent of the
25 SUI inventory has one or fewer revisions.

1 The same is true with the pelvic organ prolapse cases.
2 Forty-two percent have no revisions. Thirty-seven percent
3 have one revision. Seventy-nine percent, one or fewer
4 revisions.

5 That's the approach that we took as we went through
6 plaintiffs' cases to figure out whether they were
7 representative.

8 I'm going to go through by product, because I think
9 product is an easy way to approach it. TVT Classic, TVT
10 retropubic is the largest group of cases in the MDL. It's
11 56 percent of the MDL. Plaintiffs have only offered one
12 person from the largest group of cases in the MDL. That's
13 Carolyn Lewis.

14 As you've heard, we've agreed to accept Carolyn Lewis
15 because that's theirs. She doesn't have a revision now.
16 She's scheduled for revision in September. And we'll accept
17 that one. But in order to get at what is the largest group of
18 cases in the MDL, which would be the TVTs with no revisions,
19 Ethicon suggests to the Court that it's appropriate to have a
20 TVT case with no revisions as the second case with a January
21 trial.

22 Now, as you go through the next group of cases, we're
23 talking about the TVT-O cases or TVT Obturator cases. TVT
24 Obturator has been on the market since 2003. It's the second
25 largest group of cases in the MDL. Again, it is 28 percent of

1 the SUI cases in the MDL. Plaintiffs have given you four to
2 look at. All four of these plaintiffs have mesh revision
3 surgeries. And, remember, for these cases, 61 percent of this
4 group do not have any mesh revision surgeries.

5 So if we look at the first one, which is -- excuse me --
6 Tonya Edwards, Your Honor, she's too young. She's 32 years
7 old. She's the youngest person in this group of cases in
8 these proposed bellwethers. Only 17 percent, 17 percent of
9 the people in this MDL are in the 30-to-40 age range.

10 The implant is too old, Your Honor. It's in 2005. You
11 saw the cases that we saw before. The range of cases here,
12 the predominant number of cases is from 2009 and 2010.

13 She has a revision. Only 29 percent have one revision.
14 Sixty-one percent have no revisions. So the combination of
15 those three factors, that is, that she's too young,
16 17 percent, too old, not a predominant number either, and the
17 fact that she has one revision takes her out of the pool of
18 people that is a predictor or a bellwether for this MDL.

19 Likewise, Jo Beth Huskey, her age is okay, her implant is
20 okay -- date of implant is okay, but, Your Honor, she has two
21 revisions. Only 10 percent of this population has more than
22 one revision. That means that 90 percent don't have two or
23 more revisions. So Jo Beth Huskey with multiple revisions is
24 not representative.

25 Likewise, we go to Staci Moreland. She's too young.

1 She's 34 years old. Your Honor, the plaintiffs have given you
2 three plaintiffs in their 30s when the demographics of this
3 MDL pool show that only 17 percent of the patient -- of the
4 plaintiff population is in this age range.

5 Ms. Moreland is not only too young, she's had three
6 revisions. And remember that 10 percent have two or more. We
7 don't have the breakdown of three or more, but it certainly
8 would be less than 10. So you're over 90 percent of the
9 people that are more representative than Ms. Moreland on the
10 number of revisions.

11 Her complaint was filed more than three and a half years
12 after her mesh revision surgery. We think that's a
13 significant statute of limitations issue. And while I'm not
14 going to say we win that one, we're certainly going to argue
15 it when the time comes. And we think that she's not an
16 appropriate candidate from the statute of limitations issues.

17 Lisa Scheenberger-Ingram. The age is okay, the date of
18 implant is okay -- the date was okay, but this is another two-
19 revision plaintiff, Your Honor. Again, you're talking about
20 10 percent of the pool of plaintiffs. It's not the 90 percent
21 of people that have one or less.

22 So what you have from the TVT-0 cases of which plaintiffs
23 give you four, which is the second largest group of cases, you
24 would think that the demographic should be age 40 to 65,
25 surgery in 2009 and 2010, with no revisions or one revision.

1 Your Honor, none of these cases are representative of
2 that demographic, and this is the second largest cases, block
3 of cases in the MDL. And when Ms. Jones talks to you in a
4 minute, we're going to ask you to do the same thing with
5 TVT -- TVT-O as we asked you to do with TVT Classic, and that
6 is, identify one with one revision, one with no revisions, and
7 that way you get the biggest number of cases in the second
8 biggest block of cases that you have.

9 TVT-S. We've heard an awful lot about TVT-S and
10 inability to identify and the fact that there are going to be
11 more of these. Well, they're only 323 TVT cases, Your Honor,
12 in the MDL. And to put that in perspective, there are five
13 TVT cases for every one TVT-S case there is; five to one.
14 Three hundred -- and they're only 12 percent. Twelve percent
15 of the MDL is TVT-S. So it is an outlier by itself in
16 connection with the entire MDL.

17 And you only have one TVT-S person to look at, Your
18 Honor. You don't have a choice. You only have but one from
19 the plaintiffs. And I would suggest to you that even as an
20 outlier by itself, Ms. Vazquez is also an outlier and not
21 representative.

22 Ms. Vazquez is another 35-year-old. She is a
23 17 percenter, if you will, in the group of MDL plaintiffs. So
24 not only do you have a small category of cases, but you had an
25 unrepresentative age group within that product group. And so

1 Ms. Vazquez is 35, in a small group, and she has one revision.
2 So that takes you again out of the 61 percent that have no
3 revisions and puts you in a minority of cases, the 39
4 percent -- excuse me -- the 29 percent that have one revision.

5 I would suggest to the Court if you're inclined to choose
6 a TVT, it should be a no-revision case, which we don't have to
7 choose from here. And so that's the only one that you have.

8 For the Prolift cases, you've heard our position on the
9 Prolift cases. We didn't realize we were supposed to submit
10 Prolift cases at the beginning, so we didn't. We proposed
11 Froemming, which is a plaintiff discovery pick, and we'll try
12 that late next summer if the Court is so inclined. And we'd
13 like to have the opportunity to offer our own candidate should
14 that be appropriate later down the road. But the ones the
15 plaintiffs have --

16 JUDGE GOODWIN: You know, just as a sidelight -- and
17 this is true across all the mesh MDLs -- I would ask all of
18 you to quit reading things into what I say. I just say
19 things, and whatever I say means that.

20 I have said that I will try an AMS, an SUI case first.
21 That's what I said, I believe.

22 MR. THOMAS: Thank you.

23 JUDGE GOODWIN: Go ahead.

24 MR. THOMAS: The Lillie Crews case, a pelvic organ
25 prolapse case, Your Honor, we don't believe that's

1 representative. Her Total Prolift implant was in 2009. She's
2 had two revisions, one in August of 2011 and one in March of
3 2012.

4 Your Honor, 80 percent of all Prolift cases have one
5 revision or less. Forty-two percent of all Prolift cases have
6 no revisions. So what you're dealing with is a case in the
7 21 percent of the pelvic organ prolapse cases that takes it
8 out of the demographic which makes this a bellwether or
9 representative case.

10 Ms. Crews also has a TVT-O implant. It's not clear from
11 the record developed to date what impact that might have on
12 this litigation or this case, but the Court has recognized the
13 difficulty in having a multiple-product case, and you learn
14 more from a single-product case and any injuries that might be
15 claimed as a result of that single product than you do from a
16 confounder that has a second product.

17 So we suggest to the Court that Lillie Crews is not a
18 representative or bellwether plaintiff.

19 Finally, you have Theresa Pollard. We believe her claim
20 is barred by the statute of limitations. Her surgery occurred
21 on January 2008. She had mesh revision surgery some two
22 months later, and the record that has been developed to date
23 suggests that there's a bunching of the mesh just two months
24 later.

25 Ohio has the two-year statute of limitations. The

1 complaint was filed more than four and a half years after her
2 revision surgery, and we believe that that's a case that is
3 not appropriate because of her significant statute of
4 limitation issues.

5 So, Your Honor, just in sum, again going back to where we
6 started with the board, TVT is the biggest block of cases.
7 Plaintiffs gave you one. TVT-0 is the second biggest block of
8 cases, with no or one revision. Plaintiffs give you four with
9 multiple revisions. And Ms. Jones is going to tell you right
10 now why our representative picks are better than what the
11 plaintiffs have offered to you. Thank you.

12 JUDGE GOODWIN: Ms. Jones.

13 MS. JONES: Your Honor, I'm going to quickly go
14 through these because I understand we're running a little bit
15 short on time.

16 What we have done, as I mentioned to Your Honor earlier,
17 is we have identified four TVT cases, three TVT-0 cases, and
18 one Prolift case. And I'd like to address those by product as
19 Mr. Thomas did with respect to the TVT cases, the four cases.
20 Your Honor has copies of the Power Point that, frankly, has as
21 much of the information about the plaintiffs as I think is
22 appropriate.

23 Brown is from -- is from Alabama and is a TVT case. She
24 had her implant inserted in 2010 at the same time that she had
25 a vaginal hysterectomy and a uterine wall suspension with

1 sacrospinal ligament fixation. She has not had a revision,
2 which we believe is appropriate. She's from the State of
3 Alabama. I mention that only because we went back and looked
4 at the percentages of claims coming from each individual
5 state, and there was a total of about -- a little over three
6 percent, three and a third percent represented by the State of
7 Alabama.

8 So we believe that based upon the fact that it's an SUI
9 product, the date of the implant is 2010 when more of the
10 implants occurred, there's no revision, which is consistent
11 with the statistics and the representative injuries, that she
12 is an appropriate candidate.

13 The second TVT case that we identified was Ms. Galarza,
14 who is a divorced, 52-year-old woman, at least at the time of
15 her implantation. She has had four children, multiple
16 miscarriages. She's had symptomatic SUI. She had a TVT
17 inserted in 2010. She has not had any revisions. She
18 complains of the same injuries that we saw at the top of the
19 percentage list in terms of pain, infection, urinary issues,
20 and dyspareunia.

21 She's from Illinois. Illinois has a percentage of claims
22 in the MDL comparable to Alabama, at a little over three
23 percent.

24 The third candidate here is Annette Lughas. She had a
25 TVT. She was age 47 at the time of implant. And I know

1 Mr. Thomas mentioned this. Our statistics show that
2 75 percent of the claims fall within the 40-to-69 age group
3 across the -- across the board based upon what we have to
4 date.

5 Ms. Lughas, again, has had no revision. We believe that
6 her age, the product, the date of implantation all make that
7 representative. She's from the State of Georgia. The State
8 of Georgia has over five percent, nearly six percent of the
9 claims involved in the MDL and that her claimed injuries are
10 consistent with those across the board.

11 If we look at the next TVT case, it's Tracey Ryan Smith
12 from the State of Missouri. She was 45 at the time that she
13 received her implant. At that time, she had numerous other
14 procedures, including a hysterectomy and salpingo
15 oophorectomy, uterovaginal vault suspension. She has not had
16 a revision, although she claims that she has had pain,
17 infection, dyspareunia, and a recurrence. I mean one of the
18 things that she's suggesting that's a little bit different
19 here is that she's had a recurrence of her stress urinary
20 incontinence. But her age and claims are all representative
21 of what we see across the board.

22 The next group of plaintiffs that we have are the TVT-O
23 cases. We have three TVT-O cases that we named. The first is
24 Mary Abadie from Louisiana. Ms. Abadie is a 64-year-old
25 housewife from Louisiana. Louisiana comprises about seven

1 percent of the cases. It has one of the highest number of
2 cases in the entire MDL.

3 She had had a past hysterectomy. She had symptomatic
4 stress urinary incontinence. She had a TVT-O inserted at the
5 same time that she had a posterior colporrhaphy with sutures,
6 which I'll remind Your Honor is a treatment for prolapse that
7 does not involve one of the mesh products.

8 Her implantation date was, again, 2010. Her alleged
9 injuries are consistent with those that we see across the
10 board. And she's had no revision.

11 The second TVT-O case that we named is Cora Mae Brush,
12 who has had a revision. She had an in-office mesh revision,
13 which is consistent with what a number of patients that have
14 to have some type of -- or have some type of exposure have
15 actually in the office. She was 47 years old at the time of
16 implantation. She is divorced. She has two children.

17 We believe that her -- both the date of implantation, her
18 age, the claims that she has set forth are consistent with
19 those across the MDL.

20 Saundra Landes is from Virginia. Virginia has, I will
21 tell you, Your Honor, 2.81 percent of the claims, a little bit
22 less than that. She was age 65 at the time that she received
23 her TVT. She has had five children. She had symptomatic
24 stress urinary incontinence before. And she had multiple
25 sutures at the time that her TVT sling was implanted. It was

1 actually implanted in two thousand and -- I think it was
2 implanted in 2010. I don't have that on there.

3 She had her revision surgery in 2012, the procedure to
4 correct it. Her alleged injuries include pain, infection,
5 dyspareunia, with recurrent urinary tract infections. And we
6 believe for the reasons stated and that are on the slide that
7 she is a representative plaintiff.

8 The one issue with respect to Ms. Landes that I should
9 advise Your Honor of, even though we have named her, at the
10 time there was an attempt during her surgery -- they were
11 going to correct the prolapse as well as the stress urinary
12 incontinence. There was an attempt to use a Prolift. They
13 intended to put that in. Her bladder was perforated. The
14 surgeon abandoned that attempt and performed a native tissue
15 surgery rather than using the Prolift.

16 So I bring that to Your Honor's attention because even
17 though we named her, it does arguably involve multiple
18 products, not that -- it's just the use of them in the course
19 of the surgery.

20 That takes us then to the Prolift case that was one of
21 plaintiffs' actual selections. Ms. Froemming is from Florida,
22 and Florida --

23 JUDGE GOODWIN: Did Ms. Landes have a revision?

24 MS. JONES: I beg your pardon?

25 JUDGE GOODWIN: Did Ms. Landes have a revision?

1 MS. JONES: She did not.

2 JUDGE GOODWIN: The sheet indicates she does. So
3 she did not?

4 MS. JONES: She did --

5 JUDGE GOODWIN: Not?

6 MS. JONES: -- not have a revision.

7 JUDGE GOODWIN: Okay.

8 MS. JONES: She had a -- no, no. I think what the
9 confusion is, Your Honor, she had a subsequent procedure to
10 correct the prolapse. So she has had a subsequent procedure,
11 but it's not a procedure that's related to the TVT and the --

12 JUDGE GOODWIN: I'm not indicating I've made up my
13 mind on any of this, but she sounds pretty confusing to me.

14 MS. JONES: She is -- I will confess to you that she
15 would not be at the top of our list of choices for that
16 reason.

17 If we look then to Ms. Froemming, Ms. Froemming is
18 from -- I'm sorry -- is from Florida. Florida has almost six
19 percent of the cases in the MDL based upon what we have seen.
20 She is a married woman with two children. She had her mesh --
21 she had the Prolift actually inserted in 2006. She had her
22 mesh removed in 2012. I say that in large part, Your Honor,
23 because I think, in all candor, this is one that there may be
24 some statute of limitations issues on. Based upon the
25 testimony, let me simply say it's certainly something that

1 will probably be discussed, and I think it's appropriate to
2 advise the Court in selecting these that that's certainly a
3 potential.

4 She's also an early implant, in 2006.

5 JUDGE GOODWIN: Well, let's assume there is a
6 statute of limitations problem. I don't want to -- I don't
7 want to -- I don't want to wait all the way through until I
8 get to summary judgment motions on these cases we're
9 scheduling for bellwether trials to find out that there's a
10 bar.

11 What suggestions do you have?

12 MS. JONES: Your Honor, here would be my suggestion:
13 I'm perfectly happy to have an early date for filing any
14 motion that we believe would be barred by the statute of
15 limitations. I raise this for Your Honor because I think
16 there's going to be a question.

17 The reason that we have the issue here, just so Your
18 Honor knows, is she actually had a mesh exposure in 2008. So
19 the delay in filing certainly would appear to raise that
20 issue.

21 I'm happy to agree upon some early date to have those
22 brought forward. There may be one or two claims where there's
23 some additional discovery that needs to be done before that's
24 finalized or resolved, but that would be my off-the-cuff
25 suggestion.

1 JUDGE GOODWIN: I don't mean to panic either side by
2 bringing this up, but I'm just going to ask it. How bad would
3 it be for you all to put off your bellwether case, your first
4 bellwether case?

5 MS. JONES: How bad would it be to put it off?

6 JUDGE GOODWIN: Yes.

7 MS. JONES: I think we would -- it would be easy for
8 us to put it off and we would accommodate the Court, and it
9 would certainly in some respects make life a little bit easier
10 for us in terms of what we're trying to do. So I don't know
11 that we would object to it.

12 JUDGE GOODWIN: Let's see if I panic Mr. Aylstock.

13 MR. AYLSTOCK: A little bit, Your Honor, in this
14 respect: We believe on our side we're going to need to try
15 each of these cases before we can sit down and have meaningful
16 resolution. Certainly that's been the history of Ms. Jones'
17 client, Johnson & Johnson. It's not some company that's -- so
18 we're expecting that.

19 So we'd like to get that going. We don't want to lose
20 the trial date, but, candidly, if it came to try a TVT case in
21 January, one of the products, or nothing, or move the trial, I
22 don't think that trying a TVT case with half a loaf is in --
23 half the discovery done and in a very hectic, hurried fashion
24 is going to be representative of anything, and --

25 JUDGE GOODWIN: So let me understand you, because

1 that's why I brought it up, is you were telling me about your
2 discovery problems and your prep problems for an SUI case.

3 MR. AYLSTOCK: Yes, Your Honor.

4 JUDGE GOODWIN: So you are saying you'd rather put
5 it off than try an SUI case in January.

6 MR. AYLSTOCK: Unless Your Honor could see it clear
7 to give us the same allowance you gave AMS with the 99 days.
8 And it's more difficult, I understand, for the Court with the
9 holidays and the scheduling.

10 We're anxious to get going. We're not running from these
11 trials. We want the trials. But from a practical matter, I
12 understand the holidays. If we can't have that same allowance
13 that was given to AMS with the simultaneous disclosures --

14 JUDGE GOODWIN: It's hard for me to predict how hard
15 these cases are going to be for me. I just don't know until I
16 get your papers.

17 Among all you lawyers from all over the country now with
18 28,000 cases, you're keeping me and Judge Eifert fairly busy,
19 and I'm going to think about it.

20 I'm going to pick the cases today, and I'm going to set a
21 schedule today, but I need to -- I just needed to get your
22 reaction and your thoughts before I did. I've got them.

23 Go ahead, Ms. Jones.

24 MS. JONES: Well, Your Honor, I'm pretty much at the
25 end where, you know, we have the cases that we suggest that

1 are out there that ought to be considered. We've been through
2 all of that. We suggest that our -- that the ultimate
3 grouping ought to be the TVT cases, the TVT-0 cases, and the
4 single Prolift case that we've talked about. And frankly,
5 Your Honor, if you -- if I got to design the world, we would
6 start with two TVT cases, then we would go to TVT-0, and the
7 third case would be the Prolift case in large part because it
8 is true that most of the Prolift discovery has been done, but
9 it's also true that we tried Prolift cases and we are not
10 going to be in a position to resolve anything in this MDL
11 until we get to the point that we can deal with the TVT cases
12 that represent the vast majority of the claims.

13 And, frankly, Your Honor, I think that what we're going
14 to see when we are able to analyze all of these recent filings
15 is that those numbers are not going to change and that we will
16 see fewer and fewer revisions involved in the numbers and
17 probably a significant number that but for concerns about
18 statutes of limitations might not have been filed at all.

19 That's purely prediction based upon what we know from
20 other MDLs in general.

21 MR. AYLSTOCK: Your Honor, may we respond to the
22 defense selections?

23 JUDGE GOODWIN: Well, she's then going to want to
24 respond to yours. So go ahead and take a minute and then I'll
25 give them a minute.

1 MR. AYLSTOCK: Mr. Cartmell will.

2 MR. CARTMELL: Your Honor, first of all --

3 JUDGE GOODWIN: I know I've told this story before,
4 but I just can't resist every time this happens. There was a
5 district judge when I practiced law by the name of Dennis
6 Knapp, and he was the most successful federal judge in the
7 history of the world at settling cases. And his methodology,
8 which I abhorred and which I've avoided, was he would just let
9 everybody talk until nobody had anything else left to say, you
10 know, and he would go back and forth and back and forth until
11 everybody was just exhausted. And then he would say, because
12 there were very few women practicing law back then, he would
13 say -- he'd look up at the ceiling and he'd say, "Can't you
14 boys work this out?" And then that would start a new round of
15 talk, and he'd listen to that go back and forth until nobody
16 could say a thing.

17 I'm not going to resort to that. Go ahead.

18 MR. CARTMELL: Well, I will try to be brief, but I
19 want to make one thing clear. Mr. Aylstock just said that we
20 need to try every one of these cases before we talk
21 resolution. I totally disagree with that. I do not want to
22 try all of our cases, but I do agree with the point that we
23 need to try a few of these cases, and we are prepared to do
24 that.

25 I want to just, if I could, respond to one -- to the

1 practicality question that you brought up, Your Honor, real
2 briefly with your permission if that's okay.

3 JUDGE GOODWIN: Go ahead.

4 MR. CARTMELL: As far as it being practical for us
5 to try a TVT Classic or a TVT case in January, I think it is
6 very difficult for us to do that, and the reason is, is
7 because of the discovery right now. And right now I will tell
8 you, one thing is we've not had any nine-day depositions. The
9 longest we've had is four for one deposition, but we've had
10 two more days with that same witness on a fact witness, but we
11 are having extreme difficulty --

12 JUDGE GOODWIN: Is that four with two more?

13 MR. CARTMELL: We had four on a 30(b)(6) deposition
14 of a witness, and then they produced that -- because they
15 designated that witness as a 30(b)(6) witness, and then we did
16 take a fact witness of that person who was in the role of a
17 medical director --

18 JUDGE GOODWIN: So six days all together.

19 MR. CARTMELL: Six days all together, yeah. And so
20 where we are, Your Honor, an example that I could give you is
21 the deposition that I came from yesterday and got here last
22 night at midnight from, is we are given two days for
23 depositions and we're told that during the deposition we
24 should handle TVT-S, TVT-O, TVT Classic, Abbrevio, and Exact.

25 I will tell you in the 30 or 20 depositions we've taken

1 so far, we have only handled and talked about Abbrevio and
2 Exact in one or two depositions. And I'm very concerned about
3 that because I know at the end of this case, if there's an
4 Abbrevio or an Exact case, they're going to say, "Sorry,
5 Charley, you guys didn't take any discovery," and we're going
6 to have no discovery.

7 JUDGE GOODWIN: Well, we may have something to say
8 about that.

9 MR. CARTMELL: Okay.

10 JUDGE GOODWIN: But you should follow Judge Eifert's
11 orders to the letter.

12 MR. CARTMELL: Yes, that's right. And so yesterday
13 is a good example only in this: Yesterday we took a
14 deposition of the medical director in charge of the TVT Secur
15 and -- for five years and involved in the Classic and the
16 TVT-O as well. I took the deposition yesterday. And the way
17 we've been doing it among our deposition teams is dividing it
18 by product. And so I was assigned to take the TVT Secur
19 deposition. Mr. Zonies was assigned to take TVT-O and then
20 there's a Classic representative. And then the New Jersey
21 lawyer is there as well because it's been cross-noticed.

22 I took all day yesterday on the TVT Secur product and I
23 finished. We finished a little late, at 7:00, and I
24 appreciated them going longer with me. Today is going to be O
25 and Classic, and the New Jersey lawyer has said he needs a

1 substantial amount of time to take New Jersey's portion.

2 And at the end of the deposition, what's going to happen
3 is the same thing almost that's happened at every one. We
4 will say we're not done yet. We still need to handle some of
5 these products. New Jersey will likely not have gone or will
6 have gone and said they're not done yet. And so we'll say to
7 the defense we need another day with this witness. And that
8 has happened multiple times.

9 And nothing that I am saying is intended to be critical
10 of Ms. Jones or any of the defense, because they're not the
11 problem at all. It's just as a practical matter, now we have
12 this witness who is going to need to be produced -- we're
13 asking to be produced again, and the dates we get for them are
14 in September, you know, or late August or September. It's
15 after our deadlines. So that has already happened about a
16 dozen times. And these are the key people that we need.

17 I will say --

18 JUDGE GOODWIN: I'll let you deal with that later.

19 MR. CARTMELL: Okay. Okay. As far as our TVT
20 Classic and our TVT-S and our TVT-O discovery has gone so far,
21 there's still a whole lot of depositions before we get to the
22 point where we'll be trial-ready.

23 JUDGE GOODWIN: Now, tell me, you all have heard
24 from Judge Higbee on your scheduled -- the first scheduled
25 trial, right?

1 MR. CARTMELL: Yes.

2 JUDGE GOODWIN: And she's moved it?

3 MR. CARTMELL: She moved -- well, she -- you mean
4 the first scheduled Prolift trial -- or the second scheduled
5 Prolift trial?

6 JUDGE GOODWIN: Yes.

7 MR. CARTMELL: No, it is still set.

8 JUDGE GOODWIN: But she had a trial schedule that
9 conflicted with one of my trials.

10 MR. CARTMELL: Well, that could have been the *Bard*
11 case that was set in September --

12 THE CLERK: *Bard*.

13 MR. CARTMELL: I'm sorry. Judge Higbee -- you're
14 right. Judge Higbee did move from January to March the
15 Prolift trial.

16 JUDGE GOODWIN: And so that trial was the one that
17 was going to conflict with this trial.

18 MR. CARTMELL: That's right.

19 JUDGE GOODWIN: Okay.

20 MR. CARTMELL: And now it's in March.

21 JUDGE GOODWIN: That's what I thought.

22 MR. CARTMELL: And it's another Prolift. It's the
23 same lawyer who tried the first case, Adam Slater. So,
24 anyway, that gives you some type of flavor for this.

25 Now, with respect to the Prolift cases, Mr. Aylstock said

1 we are ready essentially to try that case because we have
2 agreed with them that we will not duplicate the discovery.
3 Therefore -- and, again, frankly, this sort of freaks me out.
4 We are relying on all of the depositions that were taken in
5 New Jersey primarily by a lawyer named Adam Slater, who is a
6 very good lawyer, but on every video in this courtroom,
7 essentially when the videos are played, it's going to be Adam
8 Slater's voice in the Prolift trials.

9 Look, you know, we're living with that. We're trying to
10 cover some of the things in the depositions that we need to,
11 and we do think that if you say in January is our trial date,
12 which we think it should be, we can be ready with very good
13 evidence and testimony and expert support in a Prolift trial.
14 But on the other cases, I'm very concerned that we will just
15 not present to you at that time, you know, our best case if
16 it's a sling case.

17 JUDGE GOODWIN: Well, this is July. It's a long way
18 between now and January. It's only a matter of how time is
19 allocated. You could prepare almost any case between now and
20 January. It's a matter of what else you're doing.

21 I'm going to need to go back and meet with Judge Eifert
22 and we're going to need to talk about this, but I'm going to
23 come out with -- I'm going to come out with a schedule for you
24 and with the selections for you.

25 MR. CARTMELL: Okay. Appreciate it, really do

1 appreciate that, Your Honor. And another thing, just so you
2 know, as far as the sling cases, some are easier to discover
3 than the other. And the TVT-S, it just is easier to discover.
4 We will be more ready on a TVT-S case. And the reason is, it
5 came to market much later. It started in 2006, where the
6 Classic started back in 1998, the TVT-O started in 2003. It
7 came off the market in 2012, but essentially --

8 JUDGE GOODWIN: But it's just a sliver according to
9 Ms. Jones.

10 MS. JONES: (Nods head up and down)

11 MR. CARTMELL: It is -- yeah, we think, like they
12 say, it's a sliver. We think it's 20 percent of the cases.
13 That's consistent with, you know, I believe Mr. Aylstock's
14 numbers, and we think it's representative. So it should just
15 be one in the top five. But as far as being ready, that
16 one --

17 JUDGE GOODWIN: I'm going to talk to Judge Fallon
18 about this.

19 MR. CARTMELL: Okay. Okay.

20 JUDGE GOODWIN: He told me one of the most important
21 things about bellwether trials is how much it costs to get
22 them ready.

23 MR. CARTMELL: Yeah. Well, it won't -- yeah. It
24 will not cost us as much on the Prolift because it has been
25 done. But if you don't mind, I'll respond briefly to what --

1 JUDGE GOODWIN: Sure.

2 MR. CARTMELL: -- Ms. Jones said. And a few things
3 that I'd like to say is Mr. Aylstock's point was of the TVT
4 cases and the big numbers, I think his point was we do believe
5 that a large number of those cases are going to turn out to be
6 TVT-Os.

7 I mean we went through our bellwether pick selection. We
8 asked lawyers from all over America to send us medical records
9 and give us data on cases so we could determine whether they
10 should be in the 15. And time and time again, we had
11 situations where they'd send it to us as a TVT case. We did
12 the digging and it became a TVT-O Classic. So I'm confused by
13 the numbers, but I will tell you I think that 79 percent is a
14 lot smaller than that. I can't tell you how much, though, at
15 all.

16 The other thing I wanted to say is -- and you touched on
17 this. Obviously you were thinking about this. A single
18 prolapse case will be predictive of a large number of cases
19 that are not in those numbers that have a prolapse and a
20 sling. It just will, because the case is obviously going to
21 focus, when you have a combination, on the prolapse,
22 undoubtedly, because that's the one with all the mesh and all
23 the wings and things like that. So the numbers of prolapse
24 cases are actually much bigger than that.

25 I had slides to go through each one, but I can just

1 mention my goal is just to give you a little tidbit of each
2 case that makes in our mind the case not representative, the
3 ones that they have identified.

4 JUDGE GOODWIN: Quickly.

5 MR. CARTMELL: Tab 4. That's tab 4. And just a
6 disclaimer upfront, we don't have as much information as them.
7 What we did was, because we don't have the medical records for
8 all these people, we called counsel across America. We had
9 conversations. We said, "Send your medical records." And we
10 tried to go through them, but some of the things I say are
11 based on what lawyers told me and the records we had, but we
12 don't have them all.

13 So for Ms. Abadie, I think the name is --

14 JUDGE GOODWIN: Say that again.

15 MR. CARTMELL: Abadie, A-b-a-d-i-e. The information
16 we have is that she's in extremely poor health. She has
17 severe COPD that makes it difficult for her to travel. And
18 the question of the lawyer who represents this client is can
19 she actually travel to come to a trial. That's the
20 information that we got.

21 She is a no-revision case with no followup. So it's a
22 low-damage case, obviously, and that's the reasons why we
23 think it's not representative.

24 With respect to Judy Brown, Judy Brown, based on what
25 we've been told -- and we've not seen these records, but it

1 came out in the deposition, she's had two prior suicide
2 attempts, she has extreme mental issues and problems to the
3 extent that the lawyer has told us he worries about her
4 ability to travel and maintain during an entire trial. That's
5 the reason why we don't think that that is a representative
6 case.

7 Cora Mae Brush. Cora Mae Brush has had extensive drug
8 and alcohol --

9 JUDGE GOODWIN: Does her lawyer not want to try her
10 case? Does her lawyer not want her case tried?

11 MR. CARTMELL: Ms. Brush or Ms. Brown?

12 JUDGE GOODWIN: Brown.

13 MR. CARTMELL: Ms. Brown's lawyer, he did not say
14 that. He said, "I worry about her being able to go through an
15 entire trial and whether or not she's going to be willing to
16 do that because of her mental issues."

17 Cora Mae Brush. It came out in her deposition that she's
18 been removed from a jury panel because she's fidgety. She's
19 had drug and alcohol abuse that has been severe in the past.
20 She was questioned extensively about that. And so we don't
21 think in the end that that would be a representative case
22 because likely that's going to be a huge portion of the
23 evidence presented or the defenses presented in that case.

24 Ms. Galarza. Now, Ms. Galarza, as Ms. Jones mentioned,
25 has had eleven pregnancies with four births. This is a

1 defense that is used in these lawsuits extensively. She's got
2 major co-morbidities, including that she is a diabetic and she
3 has significant longstanding depression preexisting the actual
4 time of the implant here.

5 These are all issues that I think would be tried heavily;
6 and in the end of the case, regardless of the verdict, it may
7 be the reason, you know, for the verdict, and we don't think
8 that's representative. She's also had fraud crimes.

9 JUDGE GOODWIN: I realize everybody wants -- you
10 want to try cases that are good for you, and they want to try
11 cases that are good for them.

12 MR. CARTMELL: That's right.

13 JUDGE GOODWIN: So their good cases are your bad
14 cases.

15 MR. CARTMELL: Right. No --

16 JUDGE GOODWIN: I kind of got that.

17 MR. CARTMELL: Okay. Okay. The other thing on
18 Saundra Landes -- and you picked up -- I won't spend any time,
19 but that is the failed Prolift case, obviously. And then it
20 was -- there was a perforation. It was converted to a sling.
21 So we don't think that's representative.

22 Ms. Lughas, Annette Lughas, this was a TVT-AA approach,
23 an abdominal approach. It's a product actually that I don't
24 think has been on anybody's charts, including ours,
25 admittedly. It's a TVT Classic but a different approach.

1 They offered that for sale, and it was not a winner on the
2 market. In other words, there are very few TVT abdominal
3 approach cases out there. And the Annette Lughas case we
4 believe is not representative for that.

5 The other reason is she's had preexisting cancer
6 surgeries and complications. And there's a severe question
7 about whether or not she was a candidate for stress urinary
8 incontinence. It came out extensively in her deposition. So
9 the question is, is it the doctor's fault, you know, for
10 placing this, rather than truly the manufacturer's.

11 JUDGE GOODWIN: You're doing a good job here --

12 MR. CARTMELL: Okay.

13 JUDGE GOODWIN: -- but could you move faster?

14 MR. CARTMELL: Yes. Sorry. The last thing is the
15 Froemming case. The Froemming case is the one that originally
16 is a Prolift case and we had designated that as one of our
17 picks.

18 After we designated the Prolift case, we then did
19 discovery. We had depositions, and it came out during the
20 deposition of the doctor, who would not talk to us before the
21 deposition, that he modified the actual Prolift by cutting the
22 wings of the Prolift. So we have not a Prolift as designed
23 implant. It's a modified Prolift; cut the wings and it's
24 actually sutured in the body, which the other Prolifts are
25 not.

1 So he used it off-label, the doctor did, and we believe
2 that that case will become all about off-label use rather than
3 the issues related to our claims. Admittedly, that is our
4 case. We did -- we signed it up. We said -- but we did not
5 add it to the list in the final group because we found that
6 out afterwards. For that reason, we don't think it's
7 representative.

8 JUDGE GOODWIN: Ms. Jones, according to them, all
9 your cases are bizarre. Do you have a response?

10 I'm being -- I hope you understand. I --

11 MS. JONES: I do understand, Your Honor. It is very
12 clear to me, as I'm sure it is to the Court, that we have very
13 different objectives here.

14 We have tried to identify those cases that we believe
15 actually represent the pool of the MDL plaintiffs. I don't
16 know that there's anything else I can say. If we haven't
17 persuaded you about that right now, we're not likely to
18 persuade you about it in the next five minutes. So I'm happy
19 to answer any questions you have.

20 JUDGE GOODWIN: All right. What I want to do -- and
21 I'll do the best I can from what I've got; I have to. Our
22 process is set up -- I don't mean this disrespectfully, but do
23 you remember the old IT phrase "garbage in, garbage out"?

24 I am going to pick the cases from the cases that I've
25 got. They might not be the cases that I would ideally pick

1 had I had the opportunity to look at all of them. But I'm
2 going to do it. But I'll remind counsel for both sides that
3 the purpose here is to be helpful to you and to your clients
4 in assessing these claims. Are these -- at the end of this
5 process, am I going to go to my plan B, which after I get
6 through the first round of bellwether trials, I have two or
7 three plan Bs in mind.

8 So I'll just do the best I can, and we'll try them, and
9 I'm not going to tell you yet how many days that are going to
10 be allocated to trial. I've got to get through *Bard* first and
11 see how much of the 12 days is needed, but we'll see.

12 This is an unnecessary addition to my comments. I doubt
13 very seriously if either of you are going to be really happy
14 with my list and my scheduling. I'll do the best I can. I'm
15 not really happy with my scheduling in December. It's not my
16 ideal way to spend the holiday season, but we're going to do
17 our work and we'll get it done.

18 Judge Eifert and I both practiced law for a long time
19 before we started these gigs, and we haven't forgotten what
20 it's like to be a practicing lawyer. I did it for 25 years.
21 She did it for about --

22 MAGISTRATE JUDGE EIFERT: About the same.

23 JUDGE GOODWIN: -- about that. So we haven't
24 forgotten.

25 I've got *Bard* starting Monday. I'm going to go back now

1 and work out a schedule and make these picks. You should have
2 an order today or tomorrow, and we'll go from there.

3 All right. Thank you very much.

4 (Hearing concluded at 12:00 p.m.)
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21 I, Teresa M. Ruffner, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
23 above-entitled matter.
24

25 /s/Teresa M. Ruffner

July 30, 2013